

Stephen Roberts
Texas Bar No. 17019200
Robert P. Franke
Texas Bar No. 07371200
Duane J. Brescia
Texas Bar No. 240252650
STRASBURGER & PRICE, LLP
600 Congress, Suite 1600
Austin, Texas 78701
(512) 499-3600 / (512) 499-3660 Fax

ATTORNEYS FOR DEBTOR SUPERIOR AIR PARTS, INC.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:	§	Case No. 08-36705
	§	
SUPERIOR AIR PARTS, INC.,	§	Chapter 11
	§	
Debtor.	§	
	§	

DEBTOR'S MOTION FOR AUTHORITY TO SETTLE ACCOUNTS RECEIVABLE

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE STREET, DALLAS, TX 75242, BEFORE THE CLOSE OF BUSINESS ON OR BEFORE TWENTY (20) DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE MUST BE IN WRITING AND FILED WITH THE CLERK, AND A COPY MUST BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING WILL BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

TO: THE HONORABLE BARBARA J. HOUSER
UNITED STATES BANKRUPTCY JUDGE:

Superior Air Parts, Inc. ("Superior" or "Debtor"), as debtor and debtor-in-possession, files its Motion for Authority to Settle Accounts Receivable ("Motion") as follows:

I. SUMMARY OF RELIEF REQUESTED

1. In this Motion, the Debtor seeks an order from the Court authorizing it to settle accounts receivable under pre-approved guidelines without the need to file separate motions to compromise controversy under Bankruptcy Rule 9019 for each account. At the beginning of this case, the Debtor was on a fast track to sell all assets under an approved bidding procedure. In February 2009, the Debtor conducted an auction of its assets, but the end result was that the Debtor did not receive any offer that was acceptable to the Debtor and the Committee. In response to the auction process, several of the Debtor's customers used this opportunity to avoid payment and otherwise have become seriously delinquent. Now that the Debtor is intending to operate in the ordinary course of business while a plan of reorganization is formulated, it is imperative to shorten its aged receivables and reach compromise with certain creditors where appropriate. Given the significant number of outstanding customer receivables, and the fact that many of them are very small in dollar amount, it would not be practical to reach a formal settlement and file 9019 motions for every account. Therefore, the Debtor seeks an order permitting it to confidentially settle accounts receivable on a case by case basis, after notice and consent from the Official Committee of Unsecured Creditors ("Committee"). The relief requested is permitted under 11 U.S.C. §§363 and 105.

II. BACKGROUND

2. In the ordinary course of Debtor's business, the Debtor typically does not have a significant problem collecting accounts receivable and the vast majority of its customers pay under the standard terms. However, due the impending sale and the uncertainty of ownership, many of the Debtor's customers took the opportunity to stop or delay payment on several outstanding shipments. As a result, the Debtor has experienced an increase in the aging of its receivables.

3. Although this trend is certainly concerning to the Debtor and the Committee, the Debtor believes that the majority of these customers will become current once the continued operations of the Debtor are made known and the Debtor continues to actively and aggressively pursue payment. This Motion is filed to obtain pre-approved guidelines by which the Debtor's credit management team can compromise and settle outstanding receivables if it will benefit the estate in both the short and long term.

III. ARGUMENT AND AUTHORITIES

4. The Debtor seeks authority to compromise certain accounts receivable, as necessary, under the following guidelines:

(a) the Debtor will use its best efforts to collect outstanding accounts receivable in the full amount of the invoices. For certain claims, it may be necessary and beneficial to use collection efforts or legal action to pursue those claims. The Debtor reserves the right to pursue all legal avenues in this regard;

(b) In certain instances however, and in the business judgment of the Debtor, some claims can be compromised for less than full value. If the Debtor determines that it would be in the best interest of the estate to compromise some of its receivables (which it does in the ordinary course of business), because (i) future sales with certain crucial creditors would increase cash flow, (ii) it would otherwise increase the value of the business as a going concern or (iii) for any other valid

business reason, then the Debtor may compromise such a claim for a confidential amount;

(c) Prior to entering into a binding compromise with an account debtor, the Debtor must provide notice and adequate disclosure to the Committee and obtain its consent. If consent is withheld, the Debtor may not settle without a court order after notice and hearing.

5. The relief requested herein can be granted by courts under 11 U.S.C. § 105 and Bankruptcy Rule 9019. Compromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge. See *Marandas v. Bishop (In re Sassalos)*, 160 B.R. 646, 653 (D. Ore. 1993). Rule 9019 states in relevant part:

(b) *Authority to Compromise or Settle Controversies within Classes.* After a hearing on such notice as the court may direct, the court make fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.¹

This rule permits settlement of controversies without subsequent court approval. See *Elder v. Uecker (In re Elder)*, 325 B.R. 292, 300 (N.D. Cal. 2005)(plan administrator can compromise controversies without going back to court). The appropriate standard is that the settlement be “fair and equitable” and in the best interest of the estate. See *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mtg. Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995); *Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 586 (7th Cir. 1994).²

¹ See also, Bankruptcy Rule 2002(a)(3)(which permits the court to limit or eliminate notice of compromises for cause shown); Bankruptcy Rule 2002(i) (court can also order notices of compromise be limited to U.S. Trustee and any appointed committee).

² A more elaborate standard has been adopted in most circuits when an actual 9010(a) motion is considered, which was first enunciated by the Supreme Court in *Protective Comm. for Independent Stockholders of TMT Trailer Ferry Inc. v. Anderson*, 390 U.S. 414, 424 (1968)(court should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties in collecting on any judgment, and all other factors relevant to a full and fair assessment of the

6. The Debtor asserts that the best interests of the estate will be served by compromising some receivables under these conditions. Any concern that receivables will be compromised too much will be alleviated by requiring the Committee's consent after adequate disclosure. Furthermore, keeping the settlements confidential will help increase collections because notice of certain settlements might encourage all customers to withhold payment until a certain threshold is reached. Not all claims will be compromised, but rather, only certain claims where the benefit to the estate will meet or exceed the compromised claim. In many instances, the time, effort and cost to collect full value on small claims will exceed the incremental recovery and the cost of proceeding with a motion to compromise controversy under Bankruptcy Rule 9019 may exceed the value of any compromise to the estate

WHEREFORE, the Debtor request that the Court enter an order authorizing the debtor to compromise certain accounts receivable under the procedures defined above and granting such other and further relief as this Court may deem just and proper.

wisdom of the proposed compromise); *Will v. Northwestern Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644-45 (3d Cir. 2006).

Respectfully submitted,

/s/ Duane J. Brescia

Stephen A. Roberts (SBN 17019200)

Robert P. Franke (SBN 07371200)

Duane J. Brescia (SBN 24025265)

STRASBURGER & PRICE, LLP

600 Congress, Suite 1600

Austin, Texas 78701

Tel. (512) 499-3600 / Fax (512) 499-3643

stephen.roberts@strasburger.com

bob.franke@strasburger.com

duane.brescia@strasburger.com

**BANKRUPTCY ATTORNEYS FOR DEBTOR
SUPERIOR AIR PARTS, INC.**

CERTIFICATE OF CONFERENCE

Undersigned counsel certifies that he conferred with counsel for the Committee and the Committee supports this motion.

/s/ Duane J. Brescia

Duane J. Brescia

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing pleading were forwarded to the parties listed on the attached service list via first class U.S. Mail, postage prepaid, on the 15th day of April, 2009.

/s/ Duane J. Brescia

Duane J. Brescia

Theilert Aircraft Engines
Nieritzstr 14 D-01097
Dresden Germany

Mahle Engine Components
60428 Marine Road
Atlantic IA 50022-8291

KS-Pistoes
Rodovia Arnald, Julio Mauberg
4000 Disrito Industrial No
Nova Odessa SP Brasil CAIZA Postal
91 CEP 13460-000

Airsure Limited
15301 Spectrum Drive, #500
Addison, TX 75001

ECK Industries, Inc.
1602 North 8th Street
Manitowoc, WI 54221-0967

Mahle Engine Components
14161 Manchester Road
Manchester, MO 63011

Crane Cams
530 Fentress Blvd
Daytona Beach, FL 32114

Corley Gasket Co.
6555 Hunnicut Road
Dallas TX 75227

Saturn Fasteners Inc.
425 S. Varney St.
Burbank, CA 91502

Champion Aerospace, Inc.
1230 Old Norris Road
Liberty, SC 29654-0686

Ohio Gasket & Shim
976 Evans Ave.
Akron, OH 44305

Gerhardt Gear
133 East Santa Anita
Burbank CA 91502-1926

Automatic Screw Machine
709 2nd Avenue SE
Decatur, AL 35601

Helio Precision Products
601 North Skokie Highway
Lake Bluff, IL 60044

Knappe & Koester Inc.
18 Bradco Street
Keen, NH 3431

Garlock-Metallic Gasket Div
250 Portwall St., Ste. 300
Houston, TX 77029

AOPA Pilot
PO Box 973
Frederick, MD 21701

Mahle Engine Components
17226 Industrial HWY
Caldwell, OH 43724-9779

Genesee Stamping & Fabricating
1470 Avenue T
Grand Prairie, TX 75050-1222

Seal Science
17131 Daimler
Irvine, CA 92614-5508

Internal Revenue Service
Special Procedures - Insolvency
P.O. Box 21126
Philadelphia, PA 19114

Deirdre B. Ruckman/AVCO
Gardere Wynne Sewell LLP
1601 Elm Street, Ste. 3000
Dallas, TX 75201

David Childs, Ph.D.
Dallas County Tax Assessor/Collector
500 Elm Street, Records Building
Dallas, TX 75202

Thielert AG
Albert-Einstein-Ring 11
D-22761, Hamburg Germany

Betsy Price, Tax Assessor Collector
100 E. Weatherford
PO Box 961018
Fort Worth, TX 76196

Hartford Aircraft Products
94 Old Poquonock Road
Bloomfield, CT 06002

Ace Grinding & Machine Company
2020 Winner Street
Walled Lake, MI 48390

Lynden International
1800 International Blvd. #800
Seattle, WA 98188

Combustion Technologies, Inc.
1804 Slatessville Road
Chatham, VA 24531

Ruhrtaler Gesenkschmiede
F.W. Wengler GMBH & Co. KG, Feld
Witten, Germany 58456

Chester Salomon
Stevens & Lee
485 Madison Ave., 20th Floor
New York, NY 10022

City of Coppell/Coppell ISD
Mary McGuffey, Tax Assessor Collector
PO Box 9478
Coppell, TX 75019

Kent Abercrombie
Superior Air Parts, Inc.
621 S. Royal Lane, Suite 100
Coppell, TX 75019-3805

Neil J. Orleans
Goins, Underkolfer, et al, LLP
1201 Elm Street, Ste. 4800
Dallas, TX 75270

Howard A. Borg/James T. Jacks
Ass't US Atty for FAA
Burnett Plaza, Suite 1700
801 Cherry Street, Unit 4
Fort Worth, Texas 76102-6882

Laurie A. Spindler
Linebarger Goggan et al, LLP
2323 Bryan Street Suite 1600
Dallas, TX 75201

Jeffrey N. Thom, Q.C.
Miller Thomson LLP
3000, 700 - 9th Avenue SW
Calgary, AB T2P 3V4

Gordon J. Toering
WARNER NORCROSS & JUDD LLP
900 Fifth Third Center
111 Lyon Street, NW
Grand Rapids, Michigan 49503

Anita F. McMahon
1646 Belmont Ave.
Baton Rouge, LA 70808

Michael L. Jones
Henry & Jones, LLP
2902 Carlisle Street, Ste. 150
Dallas, TX 75204

LARRY K. HERCULES
ATTORNEY AT LAW
1400 Preston Road, Suite 280
Plano, Texas 75093

Gregory B. Gill, Jr.
Gill & Gill, S.C.
128 North Durkee St.
Appleton, WI 54911

Laura Boyle
TW Telecom, Inc.
10475 Park Meadows, Dr. #400
Littleton, CO 80124

Melissa S. Hayward
LOCKE LORD BISSELL & LIDDELL LLP
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201
Counsel for the Insurers

Vincent Slusher/J. Seth Moore
Beirne Maynard & Parsons, LLP
1700 Pacific Ave., Ste. 4400
Dallas, TX 75201
Attys for Theilert Aircraft Engines
GMBH

Mary Frances Durham
U.S. Department of Justice
Office of the United States Trustee
1100 Commerce Street, Room 976
Dallas, TX 75242

Stefano Gazzola
Zanzi, S.p.A.
Corso Vercelli, 159
10015 Ivrea, Italy

Piyush Kakar
Seal Science Inc.
17131 Daimler
Irvine, CA 92614

Jim Griffin
Hartford Aircraft Products
94 Old Poquonock Road
Bloomfield, CT 06002

Phil Eck
Eck Industries, Inc.
1602 North 8th Street
Manitowoc, WI 54221-0967

Werner Wilhelm Albus
Valeria de Freitas Mesquita
KSPG Automotive Brazil LTDA
Rodovia Arnaldo Julio Mauerbert,
n. 4000-Distrito Industrial 01
Nova Odessa- SP Brasil
Caixa Postal 91
Susan B. Hersh
12770 Coit Rd. Ste. 1100
Dallas, TX 75251

Ronald Weaver
Avstar
1365 Park Lane South
Jupiter, FL 33458

Linda Boyle
TW Telecom, Inc.
10475 Park Meadows Dr. #400
Littleton, CO 80124

William G. Burd/Krystina N. Jiron
Atkinson & Brownell, PA
2 South Biscayne Blvd., Suite 3750
Miami, FL 33131

David W. Parham,
Elliot Schuler & A. Swick
Baker & McKenzie LLP
2001 Ross Ave., Suite 2300
Dallas, TX 75201

Timothy S. McFadden
LOCKE LORD BISSELL & LIDDELL LLP
111 South Wacker Drive
Chicago, IL 60606
Counsel for the Insurers

Billy G. Leonard, Jr.
Attorney at Law
1650 W. Virginia Street, Suite 211
McKinney, Texas 75069

Kevin H. Good
Conner & Winters LLP
1700 Pacific Avenue
Suite 2250
Dallas, Texas 75201